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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,072	04/26/2001	Rodney Carlton Burnett	AUS920010162US1	8490
7590	08/17/2005		EXAMINER	
Darcell Walker 8107 carvel Lane Houston, TX 77036			LEMMA, SAMSON B	
			ART UNIT	PAPER NUMBER
			2132	

DATE MAILED: 08/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/843,072	BURNETT ET AL.
	Examiner Samson B. Lemma	Art Unit 2132

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 May 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-28 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |



## ***DETAILED ACTION***

1. This office action is in reply to an amendment filed on May 12, 2005.

Claims 1-28 are pending in this application.

### ***Response to Arguments***

2. Applicant's argument with respect to the reference used in the previous office action has been considered. Applicant argued that **Tivoli**, the cited reference which is used for 102 (a) rejection by the Examiner, is a division of **IBM**, which is the same assignee of the present application and the cited reference/document is merely the inventor's own invention. Applicant also indicated/admitted that one of the release data of the cited reference is November 7, 2000. For the same assignee this kind of document which is available or accessible to the public through the internet is considered to be qualified to be used in 102 (a) because it is believed by the office that the invention is known by others as long as the copyright data of the reference (11/07/2000) is prior to the effective filling date of the application (04/27/2001).

3. Even though the copyright year is explicitly written/displayed on the cited reference, the applicant still argued that this does not indicate the exact date of the Publication.

4. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

5. The information is required to identify the exact publication date of the cited reference (**Tivoli**).

Art Unit: 2132

6. In response to this requirement, please provide the publication date (mm/day/yr) and the name of the inventors and any relevant information of the cited reference (Tivoli).
7. In response to this requirement, please provide related publication, non-patent literature which is related to the application and owned by the assignee and the applicant/inventors.
8. The fee and certification requirements of 37 C.F.R. § 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 C.F.R. § 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 C.F.R. § 1.105 are subject to the fee and certification requirements of 37 C.F.R. § 1.97.
9. The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained will be accepted as a complete response to the requirement for that item. However if not proved otherwise the Examiner would maintain the rejection.
10. This requirement is subject to the provisions of 37 C.F.R. §§ 1.134, 1.135 and 1.136 and has a shortened statutory period of two (2) months. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

### ***Conclusion***

Art Unit: 2132

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samson B Lemma whose telephone number is 571-272-3806.

The examiner can normally be reached on Monday-Friday (8:00 am---4: 30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, BARRON JR GILBERTO can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SAMSON LEMMA

S.L.

**07/20/2005**

  
GILBERTO BARRON Jr.  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100